

**Letter of Findings: 07-0274
Indiana Gross Retail Tax
For the Tax Year 2006**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax—Auction's Automobile Sales.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-9-3; IC § 6-2.5-4-12; IC § 6-8.1-5-1; [45 IAC 2.2-4-33](#).

Taxpayer protests the imposition of sales tax on certain automobiles sold at Taxpayer's auction.

II. Tax Administration—Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten (10) percent negligence penalty.

STATEMENT OF FACTS

Taxpayer operates as an Indiana public auction and an Indiana wholesale auto dealer. After an audit of the 2004 tax year, the Indiana Department of Revenue ("Department") determined that Taxpayer owed gross retail ("sales") tax on the sales of automobiles taking place at its auction house regardless of whether Taxpayer owned the vehicles or not. Taxpayer was given notice to start collecting sales tax on all the sales of automobiles taking place at its auction house as of August 2005. After an audit investigation of the 2006 tax year, the Department assessed additional sales tax and penalties on the sales of automobiles, which were owned by other dealers, but sold during auctions Taxpayer held at its auction house. The Department found that Taxpayer had collected sales tax on all sales transactions taking place at the auction from January to March and from September to December, but failed to collect sales tax on sales transactions taking place from April to August for automobiles, which were owned by other dealers. Taxpayer protested the imposition of sales tax on the sales of the automobiles, which were owned by other dealers. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales and Use Tax—Auction's Automobile Sales.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department found that Taxpayer had facilitated the sale of certain automobiles without collecting sales tax on the sales.

"Retail transactions" are subject to sales tax under IC § 6-2.5-2-1(a). Pursuant to IC § 6-2.5-4-12(a), "A person is a retail merchant making a retail transaction when he sells tangible personal property at auction."

Additionally, IC § 6-2.5-9-3(2) provides:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

[45 IAC 2.2-4-33](#) provides:

Every person engaged in the business of making sales at auction of tangible personal property owned by such person or others, shall be and constitute a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income of a retail merchant received from retail transactions.

Accordingly, every person in the business of making sales at auction, regardless of whether or not the person owns the property, is a retail merchant receiving gross retail income that is subject to sales tax.

A. All Auction Sales.

Taxpayer protests the Department's determination that Taxpayer owed sales tax for all sales taking place at its auctions regardless of whether Taxpayer owned the vehicles or not. Taxpayer asserts that sales tax is not due because Taxpayer is selling automobiles owned by other dealers, and as such is not the only person who could be assessed sales tax for these transactions under [45 IAC 2.2-4-33](#). Taxpayer asserts that either its subcontracted auctioneers or the other dealers selling automobiles at Taxpayer's auction should be the persons required to collect and remit the sales tax.

However, the Department determined that Taxpayer, the auction house, who is providing the time, place, and making all the arrangements for the auction, is the best person to collect and remit the tax. Since [45 IAC 2.2-4-33](#)

provides for "every person engaged in the business of making sales at auction" to be a retail merchant, then the Department can find any of the persons involved to be responsible for collecting and remitting the sales tax. In providing for the auction house to collect and remit the sales tax, the Department is enforcing a provision of the Indiana Code in order to ensure the continued compliance with Indiana law. The requirement that the auction house collect and remit the sales tax is the state's way of ensuring that the Department is provided with information it needs to carry out its objectives in the most efficient manner. The sales tax collection and remittance requirements, imposed upon Taxpayer in this instance, are more efficient than the unreasonably burdensome method of the Department going to each dealer and purchaser individually trying to find each sale transacted at Taxpayer's auctions in order to ensure that voluntary compliance with the Indiana tax laws has occurred.

Therefore, Taxpayer's protest is respectfully denied.

B. Adjustments.

Taxpayer seeks adjustments to the assessed tax based on information that was unavailable during the original audit review that was later provided by Taxpayer. Taxpayer protests the imposition of sales tax on the sales of certain automobiles alleging that the Department assessed sales tax for automobiles sales for which Taxpayer collected the sales tax at the time of sale or received a valid Indiana exemption certificate. During the course of the protests, Taxpayer submitted invoices for certain automobiles to demonstrate that sales tax was collected at the time of the sale or an exemption certificate was received for the sale.

Taxpayer has provided sufficient documentation to demonstrate that Taxpayer did collect sales tax at the time of sale or received a valid Indiana exemption certificate for the automobiles listed below:

1997 Chrysler Town & Country, investigation summary p. 5, amount \$2,800.00;

2000 Mercury Sable, investigation summary p. 6, amount \$2,700.00;

1998 Chevy Lumina, investigation summary p. 5, amount \$1,950.00;

2000 Ford Taurus, investigation summary p. 5, amount \$1,800.00; and

1983 Jeep CJ7, investigation summary p. 4, amount \$1,100.00.

Therefore, Taxpayer's protest, as it pertains to the above listed automobile sales, is sustained.

During the course of the protest, Taxpayer submitted numerous other invoices and documents. However, the other invoices and documents Taxpayer submitted, excluding the documents for the automobiles listed above, demonstrated either that the invoices were for automobile sales that were not included in the investigation summary or for an automobile sale for which sales tax was not collected at the time of sale. Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer failed to produce any documentation that demonstrates that the Department's assessment was incorrect for the automobile sales that were not included in the above list, then Taxpayer has failed to meet its burden to prove that Taxpayer collected sales tax at the time of sale. Therefore, Taxpayer's protest, as it relates to these other automobiles, is denied.

Therefore, Taxpayer's protest is denied in part and sustained in part.

FINDING

In summary, Taxpayer's protest of subpart A is denied, and Taxpayer's protest of subpart B is denied in part and sustained in part.

II. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and ten (10) percent negligence penalties for the tax years in question. Taxpayer protests the imposition of the penalties. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer asserts that it should not

be assessed a penalty because [45 IAC 2.2-4-33](#) is vague and does not define "every person," which means that Taxpayer did not have notice that Taxpayer is considered an "every person" under the statute. However, Taxpayer was given notice of the Department's determination that Taxpayer was an "every person" required to collect sales tax under [45 IAC 2.2-4-33](#) in an audit for a previous tax year. Therefore, Taxpayer has not affirmatively established that its failure to pay the deficiencies was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is respectfully denied.

Posted: 04/30/2008 by Legislative Services Agency
An [html](#) version of this document.